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BEFORE THE MONTANA DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION

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KATRIN R. CHANDLER, an	)	
individual with senior water rights in	)	
the Horse Creek watershed; BETTY	)	STATEMENT OF POSITION OF THE
J. LANNEN, an individual with	)	TONGUE RIVER WATER USERS’
senior water rights in the Horse	)	ASSOCIATION IN THE MATTER OF
Creek watershed; POLLY REX, an	)	THE PETITION FOR DECLARATORY
individual with senior water rights in	)	RULING AND REQUEST TO AMEND
the Horse Creek watershed;	)	RULE 36.12.101(13)
JOSEPH MILLER, an individual	)	
with senior water rights in the Gallatin	)	
River Valley; and THE CLARK FORK	)	
COALITION, a non-profit organization	)	
with senior water rights in the Upper	)	
Clark Fork watershed,	)	

Petitioners.

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The Tongue River Water Users’ Association (TRWUA) submits these comments in support of Petitioners in this matter. This Petition, and the Montana Department of Natural Resources and Conservation’s (DNRC’s) interpretation of “combined appropriations” in A.R.M. 36.12.101(13) is of great interest to TRWUA and its members. TRWUA is keenly interested in protecting Montana’s water resources—both ground and surface waters—from uncontrolled and unlawful appropriations.

TRWUA's members are primarily ranchers who have both surface and ground water rights. Its members irrigate with Montana's surface waters and rely on Montana's precious groundwater resources for domestic and livestock use. TRUWA and its members recognize the often substantial connectivity between Montana's ground and surface waters, and the need to protect both resources. Like Petitioners, TRWUA agrees that DNRC's interpretation of "combined appropriation" as only being such if two or more appropriations are "physically manifold into the same system," runs afoul of the Montana Water Use Act and the Montana Constitution and the prior appropriation doctrine embodied therein.

DNRC's interpretation of "combined appropriation" lends itself to abuse in the subdivision context, as well as in other contexts. If a combined appropriation is only defined as such if the system is "physically manifold into the same system," then multiple individual wells that technically meet DNRC's exempt well definition yet are in very close in proximity and appropriated from the same aquifer, are allowed to skirt the beneficial use application process. Such an interpretation infringes the statutorily and constitutionally protected senior water rights of Petitioners, members of TRWUA, and all Montana citizens with senior water rights.

Of especial importance to TRUWA is allowing the development of numerous exempt wells under DNRC's "combined appropriation" regulation in controlled groundwater areas, and in particular the Powder River Basin Controlled Groundwater Area, where water resources are recognized as being scarce and threatened by coalbed methane (CBM) development. Over the last six months, DNRC has received numerous exempt well notices of completion for CBM wells. As DNRC is aware, the wells are in fact CBM wells, not traditional water wells, and the fees for filing the notices of completion have been paid for by the CBM company. While TRWUA does not oppose ranchers using CBM produced water for livestock watering, especially

where ranchers have lost their water wells to CBM development, they do oppose unfettered use of the exempt well provision as a means of disposing of industrial waste and circumventing the provisions of the Montana Water Use Act and the beneficial use application process.

The potential for CBM companies to simply use the exempt well provision as a means of appropriating Montana's precious ground water resources, and also as a means of disposing of industrial waste, is not in keeping with the original intent of the exempt well provisions, the Montana Water Use Act, or the Montana Constitution and the prior appropriation doctrine enshrined therein. Allowing uncontrolled use of the exempt well provisions in the CBM context is an abuse of the system, just as unfettered use of exempt wells in subdivisions is an abuse of the system. Senior water rights are undermined by DNRC's "combined appropriation" interpretation. As such, A.R.M. 36.12.101(14) should be amended to comport with the Montana Water Use Act and the Montana Constitution to provide solid protection for Montana's water resources and Montanans with senior water rights.

WHEREFORE, the Tongue River Water Users' Association concurs with the Petitioners and respectfully requests that: (1) DNRC declare the Rule defining "combined appropriation" invalid; and (2) immediately initiate rule making pursuant to § 2-4-315, MCA to amend the definition of combined appropriation.

RESPECTUFLY SUBMITTED this 30<sup>th</sup> day of April, 2010.

By: /s/  
Brenda Lindlief Hall  
Attorney for the  
Tongue River Water Users' Association

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of April 2010, the foregoing Statement of Position of the Tongue River Water Users' Association was sent via electronic mail to:

The Montana Department of Natural Resources and Conservation  
[dnrwater@mt.gov](mailto:dnrwater@mt.gov)

By:           /s/                                  
Brenda Lindlief Hall